

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In Re Unidentified Border Patrol Agents

**MGA (Juvenile),
Rene Luna-Hernandez**

) Magistrate Docket No

) Case No.

)

) COMPLAINT FOR VIOLATION OF:

) Title 18 USC, Section 3144

) - Material Witness

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ing duly sworn, sta

008, at San Diego.

The undersigned complainant, being duly sworn, states:

That on or about January 25, 2008, at San Diego, California in the Southern District of California, the above-named material witnesses, presently in federal custody made arrangements to be smuggled into the United States with an unknown individual.

The above named material witnesses are citizens of Mexico with no legal right to enter or to remain in the United States of America and have no apparent means of support or family ties in the United States. The material witnesses' presence is required in order to prosecute the case against Unidentified Border Patrol Agents. Securing the material witness' presence by subpoena that may not be possible if she were allowed to return to Mexico.

COMPLAINANT FURTHER STATES THAT said aliens are citizens of a country other than the United States, have admitted that they are deportable, and their testimony is material to the case of the Unidentified Border Patrol Agents.

COMPLAINANT FURTHER STATES THAT it is impracticable to secure the aliens' attendance at trial by subpoena, they are material witnesses in relation to this case, and they should be held or admitted to bail as material witnesses pursuant to Title 18, United States Code, Section 3144.

STATEMENT OF FACTS

On January 25, 2008, at approximately 7:30 p.m., MGA (Juvenile) and Rene Luna-Hernandez entered the United States without inspection by a United States Customs and Border Protection officer at a Port of Entry. Border Patrol Agent Michael Stewart apprehended Luna-Hernandez one mile west of the San Ysidro Port of Entry, in an area known as "Memo Lane."

MGA was apprehended in the same location as Luna-Hernandez, that is, one mile west of the San Ysidro Port of Entry, in an area known as "Memo Lane." MGA also admitted to being a citizen and national of Mexico without any immigration documents that would allow him to enter or remain in the United States.

MGA alleged that he was physically abused, that is, that he was thrown to the ground, hit three to four times and thrown against the border fence by the apprehending Border Patrol Agents.

On or about January 28, 2008, Sector Investigator Jack Shipp, United States Border Patrol, obtained an original download of the video of the apprehension of MGA from the Border Patrol Remote Video Surveillance System. Sector Investigator Shipp reviewed the video, which showed an area known as "Memo Lane." In the video, unidentified Border Patrol Agents had an individual against a fence. The unidentified Border Patrol Agents pulled the individual away from the fence, then apparently threw the individual against the fence, threw him against a Border Patrol vehicle, and threw him against the fence twice more. One unidentified Border Patrol Agent apparently slapped MGA and dragged him to the back of the Border Patrol vehicle.

The unidentified Border Patrol Agents then apprehended Luna-Hernandez, who was in a ditch immediately next to where the incident with MGA occurred. Luna-Hernandez admitted to being a citizen and national of Mexico without any immigration documents that would allow him to enter or remain in the United States.

Luna-Hernandez's fingerprints and photograph were entered into the Department of Homeland Security Criminal and Immigration Databases. Record checks revealed that Luna-Hernandez had no prior immigration history. Rene Luna-Hernandez was advised in the Spanish language of his right to speak with a Mexican Consular Officer. He declined.

This complaint is based on the statement of facts which are incorporated herein.



Robin Clements
Special Agent
U.S. Department of Homeland
Security
Office of Inspector General

SWORN AND SUBSCRIBED TO IN MY PRESENCE
THIS 5th DAY OF February, 2008.



HON. RUBEN B. BROOKS
U.S. MAGISTRATE JUDGE